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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1339.

ECHO BAY WATERFRONT CORPORATION,
Petitioner,

vs.

THE CITY OF NEW ROCHELLE.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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AARON SIMMONS,
Director of Law of the City of New Rochelle.

THE COURT PRESS, N. Y. C.

INDEX.

SUBJECT INDEX:

	PAGE
Facts	1
Issues	3
As to Alleged Reasons for Issuance of Writ	3
Argument	4
I—The Court of Appeals did not err in upholding the notice as adequate	4
II—The judgment in question was properly affirmed by the Court	8
III—Conclusion	9

TABLE OF CASES CITED:

Ballard v. *Hunter*, 204 U. S. 241	5, 6
Bell's Gap RR. Co. v. *Pennsylvania*, 134 U. S. 232	6
City of Buffalo v. *Hawks*, 226 App. Div. 480 (251 N. Y. 588)	5
City of New York (801-815 E. N. Y. Avenue), 290 N. Y. 236	5, 6, 9
City of Utica v. *Proite*, 178 Misc. 925 (affd. 288 N. Y. 477)	5
Gautier v. *Ditmar*, 204 N. Y. 20	5
Hagar v. *Reclamation District 108*, 111 U. S. 701	4, 6
Huling v. *Kaw Valley R. & Improvement Co.*, 130 U. S. 559	7
J. C. League v. *State of Texas*, 184 U. S. 156	9
Keely v. *Sanders*, 99 U. S. 441	7
Kentucky Union v. *Kentucky*, 219 U. S. 140	8

PAGE

Leigh v. *Green*, 193 U. S. 79 ..... 5, 6
Levy v. *Newman*, 130 N. Y. 11 7
Longyear v. *Toolan*, 209 U. S. 414 5

Mabie v. *Fuller*, 255 N. Y. 194 7
Matter of Roberts Electric Supply Co., Inc., 131 Misc. 119 8
Matter of Trustees, 31 N. Y. 574 6
McMahon v. *Palmer*, 102 N. Y. 176 6

North Laramie v. *Hoffman*, 268 U. S. 276 7

Ontario v. *Yordy*, 212 U. S. 152 7
Ontario Land Co. v. *Wilfong*, 223 U. S. 543 5

Palmer v. *McMahon*, 133 U. S. 660 ..... 5, 6
Paulsen v. *City of Portland*, 149 U. S. 29 5
Phillips v. *Commissioner of Internal Revenue*, 283 U. S. 589 9

Ruland v. *Tuthill*, 187 App. Div. 314 8

Spencer v. *Merchant*, 125 U. S. 345 4

Winona v. *Minnesota*, 159 U. S. 526 5

MISCELLANEOUS:

Cooley on Taxation, 4th Ed.:
Section 1350 8
Sections 1400 and 1326 6

STATUTES CITED:

Rule 70 of Rules of Civil Practice 8

Tax Law, State of New York:
Secs. 165 to 165-h 4
Sec. 165-a, Sub. 1-b 1
Secs. 165-a, 165-b 5, 6
Sec. 165-h, Subs. 1 and 2 ..... 2, 3
Sec. 165-h, Sub. 6 7
Secs. 165-h-1, 165-h-2 8
Secs. 290 to 303 inc. 4

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RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

Facts.

Respondent desires to qualify a few facts contained in the petition. Petitioner alleges (p. 4) that its name was not contained in the List as owner of the property in question but rather that the name of the New Rochelle Coal & Lumber Company, its predecessor appeared. This was done in conformity with Section 165-a, Subdivision 1-b of the Tax Law (p. 14) which requires that the name of the person be included in the List who was the last known owner of the property as the same appeared on the assessment roll for the year preceding. This List in question was filed May 1st, 1941 (fol. 17) and since petitioner did not become owner of the property until February 21st, 1941 (fol. 51) its name could not have been included

as owner under the aforementioned provisions of the Tax Law. There are 1,100 parcels involved in this proceeding and of necessity considerable time was required in preparing the detailed information and accordingly the changes in ownership occurring a short time prior to the filing of the List could not be considered.

The petitioner alleges that in the published notice the property which was the subject of the action was in no way identified or described (p. 4). The notice (fol. 39) specifically states that a List of the parcels affected under foreclosure was on file and states that such List contains a description of each parcel affected, the name of the last known owner, a statement of the amount of taxes due, etc.

The motion made by the respondent for summary judgment did not request that the Court direct the Director of Finance of the City of New Rochelle to execute a deed to the City of New Rochelle but sought an order striking out the amended answer as insufficient in law and for such further relief as to the Court seemed just and proper (fols. 9, 10). The County Court granted respondent's motion for summary judgment and signed an order directing the Director of Finance to convey the property in question to the City of New Rochelle (fol. 8). Petitioner could have moved to resettle this order and could have requested a sale of the property and a disposition of the surplus, if any, pursuant to Section 165-h, Subdivisions 1 and 2 of the Tax Law (pp. 22, 23). The petitioner however did not avail itself of these provisions of the Tax Law.

Issues.

The two issues as presented in the petition have heretofore been determined by this Court:

1. (A) As to the notice, this Court has sustained similar statutes where similar notice has been served.

   (B) This Court has held that due process of law does not require a notice in the collection of taxes where an opportunity to be heard was given when the tax was levied.

2. This Court has held that upon failure to pay taxes duly levied against real estate the State Legislature may provide for a forfeiture of the property against which the tax is a lien. By Section 165-h, Subdivisions 1 and 2 of the Tax Law the Legislature has provided for the sale of property for non-payment of taxes and for distributing the proceeds of the sale. In the present case the petitioner did not see fit to avail itself of these sections by moving to resettle the final order entered herein.

As to the Alleged Reasons for the Issuance of the Writ.

While the notice did not describe the property being foreclosed it did specifically apprise those interested of the fact that the Delinquent List had been filed and that such List contained a description of the property, the name of the last known owner and the amount due. This Court has held that owners of real estate are presumed to know that their properties are subject

to tax and that upon failure to pay the same proceedings will be instituted to effect collection. Therefore, any notice which informs a property owner that foreclosure proceedings are being commenced against property four years in arrears in taxes is sufficient notice. In any event the notice refers to a list which contains the proper description of the property and if an owner is at all interested in his property it is notice to him to examine the List to ascertain if his property is therein included.

Argument.

I.

The Court of Appeals did not err in upholding the notice as adequate.

Sections 165 to 165-h of the Tax Law (pp. 12 to 22 inc.) in question here provide for a method of collecting taxes duly levied. The levying of the tax is provided by Charter and State law and prior to the actual levy of the tax a person is given an opportunity to appear and be heard in regard to the tax and to review the same by a Court proceeding (Sections 290-303 inc. of the Tax Law of the State of New York).

Due process in tax cases requires that a person shall have an adequate opportunity to be heard before a tax is levied. It does not require notice in any process designed to enforce the collection of a tax legally levied.

Spencer v. *Merchant*, 125 U. S. 345, 356;
Hagar v. *Reclamation Dist. No. 108*, 111 U. S. 701, 711;

Paulsen v. *City of Portland*, 149 U. S. 29, 41;
Palmer v. *McMahon*, 133 U. S. 660, 669;
City of New York (801-815 E. N. Y. Avenue), 290 N. Y. 236, 241.

In any event the notice as prescribed by statute and given is adequate to comply with the requirements of due process. The form and contents of the notice and the Delinquent List is prescribed by statute (Sections 165-a, 165-b of the Tax Law of the State of New York, pp. 13-16). The Tax Law provides that the notice shall be served:

1. By publication;
2. By mailing;
3. By posting (Section 165-b of the Taw Law).

These methods of serving notice have been approved by this Court and by the New York Courts.

Ballard v. *Hunter*, 204 U. S. 241, 262;
Leigh v. *Green*, 193 U. S. 79;
Ontario Land Co. v. *Wilfong*, 223 U. S. 543;
Winona v. *Minnesota*, 159 U. S. 526;
Longyear v. *Toolan*, 209 U. S. 414;
City of Utica v. *Proite*, 178 Misc. 925 (affd. 288 N. Y. 477);
City of Buffalo v. *Hawks*, 226 App. Div. 480 (affd. 251 N. Y. 588).

The Legislature in its discretion may prescribe the method of enforcing the collection of taxes.

Leigh v. *Green*, 193 U. S. 79, 87;
Gautier v. *Ditmar*, 204 N. Y. 20, 26.

Due process does not require that there be a judicial proceeding (*Palmer* v. *McMahon*, 133 U. S. 660) and accordingly there need not be any parties to the process prescribed (*Leigh* v. *Green*, 193 U. S. 79, 91). The same notice as is required in usual Court proceedings is not required in tax cases.

> *Bell's Gap RR. Co.* v. *Pennsylvania*, 134 U. S. 232, 239;
> *Leigh* v. *Green*, 193 U. S. 79, 89;
> *Ballard* v. *Hunter*, 204 U. S. 241, 262.

The collection of taxes is an administrative act and not a judicial proceeding and even though judicial assistance is invoked as a matter of convenience it does not become a judicial proceeding.

> *City of N. Y. (801-815 E. N. Y. Avenue)*, 290 N. Y. 236, 241;
> *McMahon* v. *Palmer*, 102 N. Y. 176, 189;
> *Matter of Trustees*, 31 N. Y. 574, 583;
> *Cooley on Taxation*, 4th Ed., Sections 1400 and 1326;
> *Hagar* v. *Reclamation District*, 111 U. S. 701, 711;
> *Leigh* v. *Green*, 193 U. S. 79, 89.

Petitioner claims that adequate time is not given for redemption. Section 165-b of the Tax Law (p. 16) requires the notice to be published at least once a week for six successive weeks. In the present case the notice was published May 5th, 1941 and allowed up to June 26th, 1941 as a period of redemption (R., fols. 40, 41). The right of redemption is purely

statutory and can be exercised only in the manner prescribed by the statute.

Keely v. *Sanders*, 99 U. S. 441, 445;
Levy v. *Newman*, 130 N. Y. 11, 14;
Mabie v. *Fuller*, 255 N. Y. 194, 201.

The notice sufficiently advised persons interested of the results that would ensue if the property was not redeemed. The notice stated that in the event of failure to redeem or answer persons interested would be forever barred and foreclosed of all their right, title and interest and equity of redemption in the property and a judgment in foreclosure would ensue (R., fol. 42). Section 165-h, Subdivision 6 of the Tax Law provides that in the event of a default the final judgment shall direct the Collecting Officer to execute a deed to the property to the Tax District.

All persons are presumed to know that taxes against real estate are to be levied and that appropriate action will be taken in case of non-payment and therefore are presumed to know the procedure outlined in tax statutes for the enforcement of tax collection.

North Laramie v. *Hoffman*, 268 U. S. 276, 283;
Mabie v. *Fuller*, 255 N. Y. 194, 201;
Ontario v. *Yordy*, 212 U. S. 152, 157;
Huling v. *Kaw Valley R. & Improvement Co.*, 130 U. S. 559.

II.

The judgment in question was properly affirmed by the Court.

The Legislature may provide for forfeiture or sale of property on failure to pay taxes,

> *Cooley on Taxation,* 4th Ed., Section 1350;
> *Kentucky Union* v. *Kentucky,* 219 U. S. 140.

In the case at bar the Tax Law provides for a sale of the property and a disposition of the proceeds thereof in a proper case (Section 165-h-1 and again Section 165-h-2). Petitioner did not request a sale of the property nor did it contend that the Court committed error in directing a conveyance of the property to the Tax District. Its contention was directed against the validity of the statute (Opinion of the Appellate Division in this case, R. fol. 85).

Petitioner if it desired a sale of the premises in conformity with the aforesaid provisions of the Tax Law could have moved to resettle the order entered by the Court.

> *Rule 70 of the Rules of Civil Practice,* Supreme Court, New York State;
> *Matter of Roberts Electric Supply Co., Inc.,* 131 Misc. 119, 124;
> *Ruland* v. *Tuthill,* 187 App. Div. 314, 315.

Having failed to do so it cannot raise this question which involves State Court procedure on this application.

Statutes which provide for a method of collecting taxes may be applied retroactively since they deal with new remedies and not with new rights.

J. C. League v. *State of Texas*, 184 U. S. 156;
Phillips v. *Commissioner of Internal Revenue*, 283 U. S. 589, 601;
City of New York (801-815 E. N. Y. Ave.), 290 N. Y. 236, 241.

III.

The prayer of the petitioner that a writ of certiorari issue should be denied.

Respectfully submitted,

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